

March 24, 2011

Mr. Corbin R. Davis
Clerk of the Court
Michigan Supreme Court
Michigan Hall of Justice
925 W. Ottawa, P.O. Box 30052
Lansing, MI 48909



Re: ADM 2010-05

Dear Mr. Davis:

The State Bar of Michigan Appellate Practice Section Council thanks the Court for the opportunity to comment on Administrative File No. 2010-05.

Upon reviewing the proposed amendments of MCR 2.112, 7.206 and 7.213 set forth in ADM File No. 2010-05, the Appellate Practice Section takes no position on the proposed changes to MCR 2.112.

With respect to the proposed changes to MCR 7.206, the Appellate Practice Section takes no position on the proposed amendments, with the exception of the last sentence in MCR 7.206(E)(3)(d) which states: "The proceedings shall take precedence over other nonemergency matters pending before the court." It is the position of the Section that this sentence should be stricken. As discussed further below, the Section believes that this sentence is unnecessary given the proposed amendment of MCR 7.213(C) and inclusion of this provision could unnecessarily interfere with the Court of Appeals' current practice of prioritizing cases which are enumerated in MCR 7.213(C) but which may not necessarily be considered "emergency cases," e.g. child custody cases.

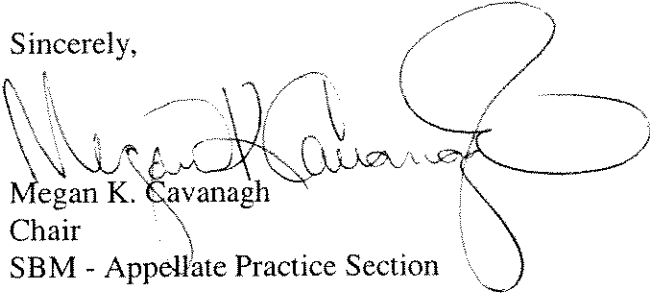
With respect to the proposed changes to MCR 7.213, the Appellate Practice Section supports the proposed amendment to include Headlee actions in the list of cases which receive priority on the session calendar under MCR 7.213(C).

It is the Section's understanding that the Court of Appeals is afforded and exercises discretion under MCR 7.213(C) to prioritize cases based upon its assessment of the need for priority and not necessarily based upon the order listed in the court rule - i.e., interlocutory criminal appeals (subsection 1) do not necessarily take precedence over child custody cases (subsection 2), interlocutory appeals from the grant of a preliminary injunction (subsection 3) do not necessarily take precedence over appeals from all cases involving election issues (subsection 4), etc. It is the Section's understanding that the Court of Appeals' current practice is, in general, to afford highest priority to child custody cases, and then afford priority over other cases to any

other cases listed in MCR 7.213(C), based upon initial filing dates of these cases. Further, it is the Section's understanding that the Court of Appeals' current practice is to afford some priority to Headlee actions, namely that these cases receive priority on the calendar over general civil cases with comparable initial filing dates.

The Section supports the Court's current practice and believes that the proposed amendment to MCR 7.213(C) preserves the Court of Appeals' discretion in prioritizing cases on the calendar, does not detract from the Court's current practice of affording child custody cases highest priority, and preserves the Court's current practice of affording some priority to Headlee actions over general civil matters.

Sincerely,



Megan K. Cavanagh
Chair
SBM - Appellate Practice Section

APPELLATE PRACTICE SECTION

Respectfully submits the following position on:

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ADMN File No. 2010-05

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The Appellate Practice Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Appellate Practice Section only and is not the position of the State Bar of Michigan.

To date, the State Bar does not have a position on this matter.

The total membership of the Appellate Practice Section is 667.

The position was adopted after an electronic discussion and vote. The number of members in the decision-making body is 23. The number who voted in favor to this position was 18. The number who voted proposed to this position was 0.

Report on Public Policy Position

Name of section:

Appellate Practice Section

Contact person:

Megan Cavanagh

E-mail:

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Proposed Court Rule or Administrative Order Number:

2010-05 Proposed Amendment of Rules 2.112, 7.206, and 7.213 of the Michigan Court Rules

The proposed amendments of MCR 2.112 and MCR 7.206 were submitted by the Legislative Commission on Statutory Mandates as a way to increase the efficiency with which Headlee actions are considered and disposed in Michigan courts, and to regularize the procedures that relate to Headlee proceedings. The proposed amendment of MCR 7.213 was added to the proposal as a corollary to proposed MCR 7.206 to clarify the prioritization of cases.

Date position was adopted:

March 21, 2011

Process used to take the ideological position:

Position adopted after an electronic discussion and vote

Number of members in the decision-making body:

23

Number who voted in favor and opposed to the position:

18 Voted for position

0 Voted against position

0 Abstained from vote

5 Did not vote

Position:

Support and Amend

Explanation of the position, including any recommended amendments:

Upon reviewing the proposed amendments of MCR 2.112, 7.206 and 7.213 set forth in ADM File No. 2010-05, the Appellate Practice Section takes no position on the proposed changes to MCR 2.112.

With respect to the proposed changes to MCR 7.206, the Appellate Practice Section takes no position on the proposed amendments, with the exception of the last sentence in MCR 7.206(E) (3)(d) which states: "The proceedings shall take precedence over other nonemergency matters pending before the court." It is the position of the Section that this sentence should be stricken. As discussed further below, the Section believes that this sentence

is unnecessary given the proposed amendment of MCR 7.213(C) and inclusion of this provision could unnecessarily interfere with the Court of Appeals' current practice of prioritizing cases which are enumerated in MCR 7.213(C) but which may not necessarily be considered "emergency cases," e.g. child custody cases.

With respect to the proposed changes to MCR 7.213, the Appellate Practice Section supports the proposed amendment to include Headlee actions in the list of cases which receive priority on the session calendar under MCR 7.213(C).

It is the Section's understanding that the Court of Appeals is afforded and exercises discretion under MCR 7.213(C) to prioritize cases based upon its assessment of the need for priority and not necessarily based upon the order listed in the court rule - i.e., interlocutory criminal appeals (subsection 1) do not necessarily take precedence over child custody cases (subsection 2), interlocutory appeals from the grant of a preliminary injunction (subsection 3) do not necessarily take precedence over appeals from all cases involving election issues (subsection 4), etc. It is the Section's understanding that the Court of Appeals' current practice is, in general, to afford highest priority to child custody cases, and then afford priority over other cases to any other cases listed in MCR 7.213(C), based upon initial filing dates of these cases. Further, it is the Section's understanding that the Court of Appeals' current practice is to afford some priority to Headlee actions, namely that these cases receive priority on the calendar over general civil cases with comparable initial filing dates.

The Section supports the Court's current practice and believes that the proposed amendment to MCR 7.213(C) preserves the Court of Appeals' discretion in prioritizing cases on the calendar, does not detract from the Court's current practice of affording child custody cases highest priority, and preserves the Court's current practice of affording some priority to Headlee actions over general civil matters.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.

<http://courts.michigan.gov/supremecourt/Resources/Administrative/2010-05-12-21-10.pdf>